

From: [BG \(Ret\) Robert Crear](#)
To: [Henderson, John W COL NWO](#)
Cc: [O'Hara, Thomas A NWO](#)
Subject: Re: [EXTERNAL] Fwd: EA and 408s on DAPL (UNCLASSIFIED)
Date: Wednesday, September 09, 2015 2:20:40 PM

Good afternoon John,

Joey Mahmoud asked me to accompany him on his visit with you in your office tomorrow at 1300 hrs. And I agreed. I look forward to seeing you again. This morning I attended the blessing of the fleet ceremony at city front hosted by MVK. It's part of the the Annual float out of the Matt Sinking Unit. I told Pat Hemphill that I was headed your way. She said to tell "John Wayne" hi and that she hoped that you didn't still have the Toyota.

Hooah!

RC

Sent from my iPhone
BG (Ret) Robert Crear
Robertcrear@aol.com <<mailto:Robertcrear@aol.com>>
601.631.4177

On Sep 2, 2015, at 11:20 AM, Henderson, John W COL NWO <John.W.Henderson@usace.army.mil> <<mailto:John.W.Henderson@usace.army.mil>> wrote:

Sir,

Thanks for bringing this to my attention; I appreciate it.

I agree that the best way to address this is to meet with Mr. Mahmoud and work through these issues at the District level. We'd be happy to facilitate this.

I'm traveling now, but have cc'd our XA (Tom O'Hara) to further coordinate this meeting.

We look forward to working through this process with your team Sir.

v/r
John

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.
From: BG (Ret) Robert Crear
Sent: Wednesday, September 2, 2015 09:50
To: Henderson, John W COL NWO
Cc: BG (Ret) Robert Crear
Subject: Fwd: [EXTERNAL] Fwd: EA and 408s on DAPL (UNCLASSIFIED)

Good morning John,

I asked Joey Mahmoud VP for Engineering for Entergy Transfer Company (ETC) of which the \$4b Dakota Access Pipeline (DAPL) is his responsibility for completion to Tee up the issues as he saw them with the District before he tried political or some other drastic move. Below are his issues. I'd be more than happy to discuss with you and or bring you and he together by phone or in person after you have had time to discuss with your staff.

Hooah!

RC

Sent from my iPhone
BG (Ret) Robert Crear
Robertcrear@aol.com <<mailto:Robertcrear@aol.com>>
601.631.4177

Begin forwarded message:

From: "Mahmoud, Joey" <Joey.Mahmoud@energytransfer.com>
<<mailto:Joey.Mahmoud@energytransfer.com>> >
Date: September 2, 2015 at 8:23:43 AM CDT
To: "BG (Ret) Robert Crear" <robertcrear@aol.com> <<mailto:robertcrear@aol.com>> >
Subject: RE: [EXTERNAL] Fwd: EA and 408s on DAPL (UNCLASSIFIED)


Hey Gen. Crear,

Issues:

1) Timely coordination of Section 106 consultation with State Historic Preservation Offices and native American Groups – they have had these requests since the first of the year and they still have not submitted them for consultation – this is taking way longer than needed and I cannot figure out what the deal is and why they are not taking action. If they insist on doing this, we need them to move forward so we do not continue to fall more behind – this is shaping up to delay our entire project by months if we can not get them to resolve the consultation and issue the permits.

2) Section 408 permit – timely review of EA and conclusion/posting for public comment. We seem to be in an endless review cycle and very poor communication and a plan to conclude and move this process forward. As it looks now, this will delay our start of construction across the 408 areas by at least 3 months which will delay the startup of the project the same amount of time. We need some serious help here to move the ball and to conclude the process.

3) USFWS Section 7 consultation – they seem to be working with us, but with the above delays, we still do not have the confidence that this will move at the pace it needs to, too keep on target of issuing the permits in the next several months.

I would be happy to join you in a meeting with these folks to talk through the issues and maybe even another meeting in DC with Eddie to move the ball. These issues seem to be non-substantive from a resource standpoint so I do not understand the delay and lack of review and moving the paperwork forward. If there are problems, we do not know about them. 

Joey

(713) 989-2710

(281) 460-4846

From: BG (Ret) Robert Crear [<mailto:robertcrear@aol.com>]
Sent: Wednesday, August 05, 2015 8:58 AM
To: Mahmoud, Joey <Joey.Mahmoud@energytransfer.com>
<<mailto:Joey.Mahmoud@energytransfer.com>> >
Subject: Re: [EXTERNAL] Fwd: EA and 408s on DAPL (UNCLASSIFIED)

Good morning Joey,

Will continue to push. I do need to talk to you either this evening or tomorrow morning about an issue that the Omaha District brought to my attention.

The Omaha District changed commanders on last Friday. So, we have a new commander, Col John Henderson but the good thing is that I know him. New commanders have a million things to do within the first few days, however, I've been able to schedule an office call with him to catch up this afternoon. It's too soon for him to see customers or applicants, but I will T up the issues for him and see when is the soonest that he would meet with us. On a plane to Omaha now.

Hooah!

RC

Sent from my iPhone

BG (Ret) Robert Crear

Robertcrear@aol.com <<mailto:Robertcrear@aol.com>>

601.631.4177

On Aug 4, 2015, at 7:41 PM, Mahmoud, Joey <Joey.Mahmoud@energytransfer.com>
<<mailto:Joey.Mahmoud@energytransfer.com>> > wrote:

Hey General,

This is getting very serious on timing and we probably need a meeting with the Col to get this moving. This is going to delay our project if we cannot get some real movement and end the BS. Can you help push this more?

Sent from my iPhone

From: BG (Ret) Robert Crear [<mailto:robertcrear@aol.com>]
Sent: Friday, July 31, 2015 2:12 PM
To: Mahmoud, Joey
Cc: Howard, Monica
Subject: Fwd: [EXTERNAL] Fwd: EA and 408s on DAPL (UNCLASSIFIED)

Joey,

I've been in verbal consultation with the Corps since I got your request. Tammy Conforti is responsible for Section 408 and works for Eddie Belk. Below is her response.

RC

Sent from my iPhone

BG (Ret) Robert Crear

Robertcrear@aol.com <<mailto:Robertcrear@aol.com>>

601.631.4177

Begin forwarded message:

From: "Conforti, Tammy L HQ02" <Tammy.Conforti@usace.army.mil>
<<mailto:Tammy.Conforti@usace.army.mil>> >
Date: July 29, 2015 at 12:28:12 PM CDT
To: "BG (Ret) Robert Crear" <robertcrear@aol.com> <<mailto:robertcrear@aol.com>> >
Subject: RE: [EXTERNAL] Fwd: EA and 408s on DAPL (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Sir,

As discussed, I've tried to address some of the specific points related to Section 408. I have to caveat that I'm providing these responses based on the limited information below. The best approach is to continue to work through the district and if needed have them elevate an issue through the vertical team.

A) On the Federal owned lands, there are no surface impacts that would trigger a need for any sort of NEPA analysis.

A decision on a Section 408 request is a federal action, and therefore subject to NEPA and

other environmental compliance requirements. NEPA and other analysis should be commensurate with the scale and potential effects of the activity that would alter the USACE project. This includes any activities below the surface.

B) Related to the Garrison Project comment, not sure what issue is specifically being identified here, but a Section 408 would apply to activities that crosses the "lands and real property interests" associated with USACE civil works project. It does not have to lands owned by the government. As far as scoping for an EA, page 10 of the Section 408 policy has some guidance that may clarify things such as " The scope of analysis for the NEPA and environmental compliance evaluations for the Section 408 review should be limited to the area of the alteration and those adjacent areas that are directly or indirectly affected by the alteration." I defer to the district to determine what areas are relevant to include in the EA.

C) If USACE owned property is involved, the cross-walk between the real estate outgrant process and Section 408 can be confusing. In some cases a decision can be made entirely within the real estate outgrant process and others may require the outgrant process with the Section 408 process. I recommend reviewing the Section 408 policy starting on page 3 related to real estate outgrants to ensure there is a common understanding on the requirements. This is clarification that was new when the July 2014 was released.

D) Before July 2014, crossings across federal waterways were likely handled all within the Section 10 process. The July 2014 Section 408 policy now requires both, a Section 10 decision and a Section 408 decision, however the information can be shared between them.

Tammy L. Conforti, PE
Levee Safety Program Manager
HQUSACE
441 G Street, NW
Room 3E62
Washington, DC 20314
202-761-4649 (office)
202-365-6586 (blackberry)
tammy.conforti@usace.army.mil <<mailto:tammy.conforti@usace.army.mil>>

-----Original Message-----

From: BG (Ret) Robert Crear [<mailto:robertcrear@aol.com>]
Sent: Wednesday, July 22, 2015 9:24 AM
To: Belk, Edward E HQ
Cc: Conforti, Tammy L HQ02; BG (Ret) Robert Crear
Subject: [EXTERNAL] Fwd: EA and 408s on DAPL

Good evening Eddie,

Thank you again for meeting with me, Joey Mahmoud and Greg Brazaitis on 9 July 2015 in your office with Jennifer Moyer and members of the Regulatory staff. Joey had nothing but good things to say about the meeting. He was really pleased.

In addition to the Regulatory issues that Jennifer and her staff were working to resolution with the ETC DAPL, Omaha District and FWLS, Joey mentioned to you that he had concerns about the section 408 process. However, since that was not the responsibility of Regulatory, he promised to get back with you with the specific issues so that your staff charged with that responsibility could address them. The below email from Joey highlights the issues that they have. I would appreciate it if you would direct this to the appropriate person in your office or elsewhere in the HQ so that the same type successful issue resolution and dialogue that Jennifer Moyer established in resolving the Regulatory issues can be established to resolve the Section 408 issues. I cc'ed Tammy Conforti.

Thanks again for your understanding, help and support to get visibility and resolution of important issues that have Corps-wide implications.

Hooah!

RC

Sent from my iPhone
BG (Ret) Robert Crear
Robertcrear@aol.com <<mailto:Robertcrear@aol.com>>
601.631.4177

Begin forwarded message:

From: "Mahmoud, Joey" <Joey.Mahmoud@energytransfer.com>
<<mailto:Joey.Mahmoud@energytransfer.com>> >
Date: July 16, 2015 at 1:29:33 PM CDT
To: "robertcrear@aol.com" <<mailto:robertcrear@aol.com>> " <robertcrear@aol.com>
<<mailto:robertcrear@aol.com>> >
Subject: FW: EA and 408s on DAPL

Joey

(713) 989-2710

(281) 460-4846

From: Mahmoud, Joey
Sent: Thursday, July 16, 2015 1:25 PM
To: robertcrear@aol.com <<mailto:robertcrear@aol.com>>
Cc: Howard, Monica
Subject: FW: EA and 408s on DAPL
Importance: High

General Crear, please see below the concerns over the 408 process and the permitting and let us know when we can either talk to them or get some sort of clarity as this is spinning out of control.

USACE EA

Omaha District - North Dakota - Section 408 Applicability or areas under review by the

1) Lake Oahe – Federal ownership of the banks on either side of the lake – no surface impacts and our pipe is proposed to be greater than 50 foot below the surface of the land and greater than 92 feet below the mud line of the lake

2) Garrison Project flowage easements (2.5 mile crossing of federal flowage easement – not owned by the USA – under private ownership) adjacent and north of the Missouri River (Not 408, but being considered as part of the EA that contemplates the 408 areas) – Conventional construction, temporary surface impacts with one valve on the property that will be above ground – no surface flow alterations and everything will be at-grade. The pipe will be buried below grade a minimum of three feet below the surface.

Illinois 408 Permits with St. Louis District

We have 408 applications in for 3 locations:

1) West levee of the IL River (which the HDD includes the Section 10 Illinois River) – no surface impacts and our pipe is proposed to be greater than 80 feet below the levee and 45 feet below the mud line of the river.

2) HDD of the IL River's East Levee (greater than a mile from the IL River) – no surface impacts and our pipe is proposed to be greater than 80 feet below the levee and similar depth beneath the river/canal

3) Approximately 2.5 miles of flowage easements for Lake Carlyle dam project (discrepancy because Omaha is stating that the flowage easements don't warrant 408 in their district, but here they believe a 408 is warranted? Also, St. Louis does not think any NEPA document is required and it qualifies for a category exclusion. St. Louis believes they can issue the consent to easement through a cat ex. – Conventional construction, temporary surface impacts. No surface flow alterations and everything will be below grade. The pipe will be buried below grade a minimum of three feet below the surface.

Issues and concerns:

1) On the Federal owned lands, there are no surface impacts that would trigger a need for any sort of NEPA analysis.

2) For all areas, we believe that this is an exercise in futility and excess regulatory review and qualifies as a categorical exclusion at best. Based upon our experience across the US in other districts (especially along the Gulf Coast in Galveston, New Orleans, Vicksburg, Mobile, and Jacksonville Districts) these type of crossings would qualify for a basic "Consent to Easement or Consent to Cross" consistent with other federal crossings across the United States – our company has literally executed hundreds of crossings of Section 10 and project waterways and has never had to develop an EA nor obtain anything other than a standard real-estate consent document to allow the crossing. We are somewhat confused over the regulatory burden and timing of the request.

3) We have been trying to navigate this process for no less than 10 months at this point and are just now getting into the EA (internal review by the USACE) and we are greatly concerned of the process to issue the EA to the public, let alone to obtain approval in a timely manner. We believe this will delay the project in its entirety, which will delay the deployment of nearly 5 billion dollars of investment into the US economy plus delay the transport of the crude oil to the refineries and to the public – a great tragedy to the US if this happens.

4) USACE believes that we also need to include the Section 10 water crossing of the Missouri River (which is already being permitted or reviewed with our Section 10 permit application – this is duplicative and unnecessary and is not a required element of the permit process under the Nationwide Permit

Program – somehow this has been misinterpreted as being required and we need help bringing this back to reality and within the normal Nationwide permit review process.

Joey

(713) 989-2710

(281) 460-4846

Private and confidential as detailed here

<BlockedBlockedhttp://www.energytransfer.com/mail_disclaimer.aspx> . If you cannot access hyperlink, please e-mail sender.

Classification: UNCLASSIFIED

Caveats: NONE

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